

REMARKS

The office action dated December 10, 2008 and the Interview Summary mailed April 21, 2009, has been studied in detail along with the references cited and applied by the examiner. In response, selected claims have been amended (claims 1, 14, and 34) and new claims added (claims 46-47). The pending claims should be read in conjunction with the accompanying arguments in support of patentability. Further examination and consideration of the application as amended are respectfully requested.

THE OFFICE ACTION

Claims 1, 3, 6-21, 34-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over Vandeveldt et al. (WO 91/07876) in view of Berger (US PN 4,574,084).

Claims 1, 3, 6-21, 34-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over Harwardt et al. (DE 41 37 544) in view of Berger.

REJECTIONS UNDER 35 U.S.C. §103(a)

Combination of Vandeveldt and Berger

Berger merely teaches the preparation of a stabilized, modified, aqueous chlorite solution with a content of peroxide compound. The chlorite solution obtained by this process can be used in multiple ways as discussed hereinafter.

The only generalization one can make with Berger is that aqueous chlorite (a chlorine in oxidation state) solutions were already known and the invention now opens the possibility to use these chlorite solutions together with the stabilizing

peroxy compounds in a broader manner. On column 7 starting from line 61 it is disclosed that the:

"stabilized, modified chlorite solutions according to the invention also have further advantageous uses. Thus, it has been found that in particular dilute chlorite solutions according to the invention have excellent biocidal actions in the broadest sense. This more particularly applies to a dilute sodium chlorite, preferably with an approximately 0.1 to 0.5% by weight concentration".

The Examiner attempts to demonstrate that the generalization or broadening of the Berger reference is to use this particular teaching of a chlorite solution with the peroxide stabilizer used as a biocidal compound, provides the general teaching that skin diseases can be treated with any biocidal composition used for disinfection.

To the contrary, Berger does not teach that any kind of biocidal composition can be used for the treatment of skin diseases. Berger specifically states that "the agent according to the invention and particularly the sodium chlorite solution can also be used for treating skin diseases . . ." (column 8, lines 9-11).

To illustrate that there is no general teaching of a nexus between skin diseases and biocidal compositions that are used for disinfection, Applicant submits the following. The enclosed Technical Data Bulletin (Exhibit A) for PERMA-WASH disinfectant describes a combination of chlorine dioxide (an oxide of chlorine) which "produces a highly potent broad spectrum biocide concentrate". This combination is useful as a broad spectrum disinfectant for HIV and Herpes Simplex Virus on inanimate environmental surfaces.

While the biocide of PERMA-WASH can disinfect inanimate objects, it also includes a CAUTION to "avoid contact with skin, eyes, or clothing". The first aid instructions include rinsing skin immediately with plenty of water for 15-20 minutes and to call a poison control center or doctor for treatment advice.

In contrast to the Examiner's assertion, as illustrated above, Berger does not provide the "general teaching" that skin diseases can be treated with biocidal compositions that are used for disinfection. With reference to the PERMA-WASH product, just the opposite is taught. Thus, one of ordinary skill in the art would not have had a reasonable expectation of success in treating skin diseases using a composition comprising tosylchloramide.

Therefore, **Berger does not teach a nexus between skin diseases and biocidal compositions that are used for disinfection.** Berger can be used only for the limited teaching of the particular composition described in Berger, i.e. a dilute sodium chlorite solution according to the particulars described therein.

Therefore, any teaching given by Berger cannot be transferred to the particular compounds and methods now recited in independent claims 1, 34 and 46 of the present application.

The active ingredients of Vandeveld which can contain chloramine-T are described for disinfection matters only. There is absolutely no indication in Vandeveld that chloramine-T is suitable for the topical treatment of efflorescence skin diseases, much less herpes simplex virae.

The examiner acknowledges that Vandeveld does not expressly disclose the employment of tosylchloramide in methods of the particular skin diseases herein and since Berger does not provide the general teaching that such skin diseases can be treated with biocidal compositions that are used for disinfection; one of ordinary skill in the art would not have had a reasonable expectation of success in treating skin diseases caused by Herpes Simplex virae.

None of the cited references, either singularly or in combination, provide any teachings for addressing the problems addressed by the present application. There is no suggestion, motivation, or teaching to combine the references. There is no motivation to combine the cited references to modify their teachings to reach the above

referenced claims. Vandeveldel expressly teaches away from combining or modifying its composition using the teachings of Berger. "The Court relied upon the corollary principle that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious". United States v. Adams, 383 U.S. 39, 51-52 (1966); and cited with approval in KSR Int'l v. Teleflex, Inc., 127 S. Ct. 1727, 1740-1741 (2007).

Although taught away from, if one combines the teaching of Berger with Vandeveldel one may add to the tosylchloramide-T compound of Vandeveldel additionally a peroxide of Berger to stabilize this compound for the purpose of disinfection. If one starts from Vandeveldel, one comes to the same conclusion, i.e. to combine for disinfection purposes the chloramine-T with additional stabilizing peroxide compounds for disinfecting HIV contaminated dead bodies.

However, in each scenario one does not arrive at the method recited in claims 1, 34, and 46.

Applicant submits that there is no suggestion to combine the teachings and suggestions of Vandeveldel and Berger, as advanced by the Examiner, except for using Applicant's disclosure as a template through a hindsight reconstruction of Applicant's claims.

Combination of Harwardt [Kramer] and Berger

The examiner acknowledges that Harwardt et al. does not expressly disclose the employment of tosylchloramide in methods of the particular skin diseases herein, and since Berger does not provide the general teaching that such skin diseases can be treated with biocidal compositions that are used for disinfection; one of ordinary skill in the art would not have had a reasonable expectation of success in treating skin diseases caused by herpes simplex virae as recited in Applicant's claims.

The arguments raised with respect to Vandeveld and Berger are appropriate here and will not be repeated. Combining the references is not suggested and is particularly taught away from.

None of the cited references, either singularly or in combination, provide any teachings for addressing the problems as identified by Applicant. There is no motivation to combine any of the cited references to modify their teachings to reach the above referenced claims.

Combining the cited references would not result in Applicant's claimed invention as recited above. In effect, the combination of references stated in the office action is being assembled to address the problem Applicant is addressing by the method described by Applicant. Consequently, independent claims 1, 34 and 46, and all claims dependent therefrom, define over any fair teachings attributable to the references either taken singularly or in combination.

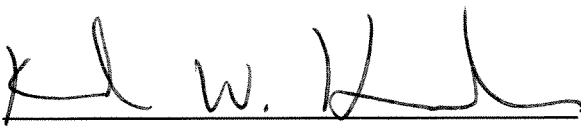
CONCLUSION

All formal and informal matters having been addressed, this application is in condition for allowance. Early notice to that effect is solicited. Applicant's attorney can be reached at the telephone number below if any further information is needed.

Respectfully submitted,

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May 8, 2009
Date


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